

## **Assembly Bill No. 3215**

### **CHAPTER 1090**

An act to amend Sections 273a and 273d of, and to add Section 273.1 to, the Penal Code, relating to crimes.

[Approved by Governor September 29, 1996. Filed  
with Secretary of State September 30, 1996.]

#### **LEGISLATIVE COUNSEL'S DIGEST**

AB 3215, Hawkins. Crimes: child abuse: terms of probation.

Existing law provides that any person who willfully causes or permits any child to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of that child to be injured or endangered, is guilty of a crime.

Existing law also provides that any person who willfully inflicts upon a child any cruel or inhuman corporal punishment or injury resulting in a traumatic condition is guilty of a crime. If a person is convicted of violating this provision and probation is granted, the court shall require supervised counseling as a condition of probation.

This bill would provide that if a person is convicted of violating either of the above provisions and probation is granted, the court shall require specified minimum conditions of probation, including (1) mandatory minimum periods of probation, (2) criminal court protective orders protecting the victim from further acts of violence or threats, and, if appropriate, residence exclusion or stay-away conditions, (3) successful completion of no less than one year of a child abuser's treatment counseling program to be paid by the defendant if he or she is able, (4) and abstinence from the use of drugs or alcohol and subjection to random drug testing if the offense was committed while the defendant was under the influence of drugs or alcohol. This bill would impose a state-mandated local program by increasing the duties of probation officers.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that no reimbursement shall be made from the State Mandates Claims Fund for costs mandated by the state pursuant to this act, but would recognize that local agencies and

school districts may pursue any available remedies to seek reimbursement for these costs.

*The people of the State of California do enact as follows:*

SECTION 1. Section 273a of the Penal Code is amended to read:

273a. (a) Any person who, under circumstances or conditions likely to produce great bodily harm or death, willfully causes or permits any child to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of that child to be injured, or willfully causes or permits that child to be placed in a situation where his or her person or health is endangered, shall be punished by imprisonment in a county jail not exceeding one year, or in the state prison for two, four, or six years.

(b) Any person who, under circumstances or conditions other than those likely to produce great bodily harm or death, willfully causes or permits any child to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of that child to be injured, or willfully causes or permits that child to be placed in a situation where his or her person or health may be endangered, is guilty of a misdemeanor.

(c) If a person is convicted of violating this section and probation is granted, the court shall require the following minimum conditions of probation:

(1) A mandatory minimum period of probation of 48 months.

(2) A criminal court protective order protecting the victim from further acts of violence or threats, and, if appropriate, residence exclusion or stay-away conditions.

(3) Successful completion of no less than one year of a child abuser's treatment counseling program approved by the probation department. The defendant shall be ordered to begin participation in the program immediately upon the grant of probation. The counseling program shall meet the criteria specified in Section 273.1. The defendant shall produce documentation of program enrollment to the court within 30 days of enrollment, along with quarterly progress reports.

(4) If the offense was committed while the defendant was under the influence of drugs or alcohol, the defendant shall abstain from the use of drugs or alcohol during the period of probation and shall be subject to random drug testing by his or her probation officer.

(5) The court may waive any of the above minimum conditions of probation upon a finding that the condition would not be in the best interests of justice. The court shall state on the record its reasons for any waiver.

SEC. 2. Section 273d of the Penal Code is amended to read:

273d. (a) Any person who willfully inflicts upon a child any cruel or inhuman corporal punishment or injury resulting in a traumatic condition is guilty of a felony and shall be punished by imprisonment in the state prison for two, four, or six years, or in a county jail for not more than one year, by a fine of up to six thousand dollars (\$6,000), or by both that imprisonment and fine.

(b) Any person who is found guilty of violating subdivision (a) shall receive a four-year enhancement for a prior conviction of that offense provided that no additional term shall be imposed under this subdivision for any prison term served prior to a period of 10 years in which the defendant remained free of both prison custody and the commission of an offense that results in a felony conviction.

(c) If a person is convicted of violating this section and probation is granted, the court shall require the following minimum conditions of probation:

(1) A mandatory minimum period of probation of 36 months.

(2) A criminal court protective order protecting the victim from further acts of violence or threats, and, if appropriate, residence exclusion or stay-away conditions.

(3) Successful completion of no less than one year of a child abuser's treatment counseling program approved by the probation department. The defendant shall be ordered to begin participation in the program immediately upon the grant of probation. The counseling program shall meet the criteria specified in Section 273.1. The defendant shall produce documentation of program enrollment to the court within 30 days of enrollment, along with quarterly progress reports.

(4) If the offense was committed while the defendant was under the influence of drugs or alcohol, the defendant shall abstain from the use of drugs or alcohol during the period of probation and shall be subject to random drug testing by his or her probation officer.

(5) The court may waive any of the above minimum conditions of probation upon a finding that the condition would not be in the best interests of justice. The court shall state on the record its reasons for any waiver.

SEC. 3. Section 273.1 is added to the Penal Code, to read:

273.1. (a) Any treatment program to which a child abuser convicted of a violation of Section 273a or 273d is referred as a condition of probation, shall meet the following criteria:

(1) Substantial expertise and experience in the treatment of victims of child abuse and the families in which abuse and violence has occurred.

(2) Staff providing direct service are therapists licensed to practice in this state or are under the direct supervision of a therapist licensed to practice in this state.

(3) Utilization of a treatment regimen designed to specifically address the offense, including methods of preventing and breaking

the cycle of family violence, anger management, and parenting education which focuses, among other things, on means of identifying the developmental and emotional needs of the child.

(4) Utilization of group and individual therapy and counseling, with groups no larger than 12 persons.

(5) Capable of identifying substance abuse and either treating the abuse or referring the offender to a substance abuse program, to the extent that the court has not already done so.

(6) Entry into a written agreement with the defendant that includes an outline of the components of the program, the attendance requirements, a requirement to attend group session free of chemical influence, and a statement that the defendant may be removed from the program if it is determined that the defendant is not benefiting from the program or is disruptive to the program.

(7) The program may include, on the recommendation of the treatment counselor, family counseling. However, no child victim shall be compelled or required to participate in the program, including family counseling, and no program may condition a defendant's enrollment on participation by the child victim. The treatment counselor shall privately advise the child victim that his or her participation is voluntary.

(b) If the program finds that the defendant is unsuitable, the program shall immediately contact the probation department or the court. The probation department or court shall either recalendar the case for hearing or refer the defendant to an appropriate alternative child abuser's treatment counseling program.

(c) Upon request by the child abuser's treatment counseling program, the court shall provide the defendant's arrest report, prior incidents of violence, and treatment history to the program.

(d) The child abuser's treatment counseling program shall provide the probation department and the court with periodic progress reports at least every three months that include attendance, fee payment history, and program compliance. The program shall submit a final evaluation that includes the program's evaluation of the defendant's progress, and recommendation for either successful or unsuccessful termination of the program.

(e) The defendant shall pay for the full costs of the treatment program, including any drug testing. However, the court may waive any portion or all of that financial responsibility upon a finding of an inability to pay. Upon the request of the defendant, the court shall hold a hearing to determine the defendant's ability to pay for the treatment program. At the hearing the court may consider all relevant information, but shall consider the impact of the costs of the treatment program on the defendant's ability to provide food, clothing, and shelter for the child injured by a violation of Section 273a or 273d. If the court finds that the defendant is unable to pay for any portion of the costs of the treatment program, its reasons for that



finding shall be stated on the record. In the event of this finding, the program fees or a portion thereof shall be waived.

(f) All programs accepting referrals of child abusers pursuant to this section shall accept offenders for whom fees have been partially or fully waived. However, the court shall require each qualifying program to serve no more than its proportionate share of those offenders who have been granted fee waivers, and require all qualifying programs to share equally in the cost of serving those offenders with fee waivers.

SEC. 4. No reimbursement shall be made from the State Mandates Claims Fund pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code for costs mandated by the state pursuant to this act. It is recognized, however, that a local agency or school district may pursue any remedies to obtain reimbursement available to it under Part 7 (commencing with Section 17500) and any other provisions of law.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

